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MATTHIAS CHANG WEN CHIEH

v.

AMERICAN EXPRESS (MALAYSIA) SDN BHD

B

HIGH COURT MALAYA, KUALA LUMPUR
NOOR AZIAN SHAARI J
[CIVIL SUIT: S3-23-33-2002]
14 APRIL 2010

C ***CIVIL PROCEDURE:*** *Contempt of court - Committal proceedings - Discharge of person committed - Whether a third party unrelated to contemnor could pay fine imposed and obtain order of discharge in respect of contemnor - Rules of the High Court 1980, O. 52 rr. 1A, 7(1)*

D ***STATUTORY INTERPRETATION:*** *Construction of statutes - Committal proceedings - Discharge of person committed - O. 52 r. 7(1) Rules of the High Court 1980 - Wording of rule - Whether so clear that no other interpretation could be given - Ordinary meaning*

E The plaintiff, who was suing the defendant for various reliefs, was cited during the trial for "contempt committed in the face of the court" under O. 52 r. 1A of the Rules of the High Court 1980 ('RHC'). At the end of the contempt proceedings, a fine of RM20,000 in default of one month's imprisonment was imposed upon the plaintiff. The plaintiff did not pay the fine and
F surrendered himself to serve the default sentence. Subsequently, one Salahuddin Hisham ('SH') paid a sum of RM20,000 to the court as the fine imposed by the court upon the plaintiff. SH was then directed to make a formal application to determine whether a third party, not in any way related to the plaintiff, could pay the fine
G imposed and obtain an order of discharge in respect of the plaintiff. SH averred that he was relying on O. 52 r. 7 of the RHC, contending that r. 7(1) should be read broadly not only to cover the committed person but other persons such as SH.

H **Held (dismissing SH's application):**

(1) On a close scrutiny of the relevant rule (r. 7(1) of O. 52 of the RHC), it is very clear that the application for discharge must be made by "... any person committed to prison for any
I contempt of Court ..." which in this case would be the plaintiff himself. SH was not the committed person and on his own

admission did not even have the mandate of the plaintiff who had refused to pay the fine. The relevant rule cannot be enlarged or read broadly. The wording is so clear that no other interpretation can be given. The relevant rule should be given its ordinary meaning. (para 13)

[RM20,000 paid by SH to be returned to him.]

Legislation referred to:
Rules of the High Court 1980, O. 52 rr. 1A, 7(1)

Other source(s) referred to:
N.S. Brindra's Interpretation of Statutes, 8th edn, p 98

For Salahuddin Hisham - Avtaran Singh; M/s RM Abdullah, Kuan & Assoc

Reported by Suresh Nathan

JUDGMENT

Noor Azian Shaari J:

[1] In this suit, the plaintiff Matthias Chang Wen Chieh is suing the defendant American Express (M) Sdn. Bhd. for the following relief:

AND the Plaintiff claims:

a) Damages for libel under paragraph 20 and 22 above;

b) Damages for misrepresentation under paragraph 4, 5 & 18 above;

c) Damages for breach of contract under paragraph 16, 17 & 18 above;

d) Aggravated Damages under paragraph 27 above;

e) Damages for malicious falsehood under paragraph 19, 20, 22 and 27 above;

f) Interest;

g) Cost of this action;

h) Further or other relief as this Honourable Court deem fit.

[2] The case was fixed for hearing on 25 and 26 March 2010.

[3] During the trial, on 25 March 2010, the plaintiff was cited for "contempt committed in the face of the court" under O. 52 r. 1A of the Rules of the High Court 1980 ("RHC").

[4] At the end of the contempt proceedings, I imposed a fine of RM20,000 in default one (1) month imprisonment. I gave the plaintiff a week from the date of sentencing (ie, 25 March 2010) to pay the fine.

[5] At the end of the one week (ie, 31 March 2010) the plaintiff did not pay the fine and on 1 April 2010 he surrendered himself to serve the default sentence.

[6] On 5 April 2010, one Salahuddin bin Hisham ("SH"), Identity Card No. 600709-01-5007 paid a sum of RM20,000 to the court as the fine imposed by the court on the plaintiff.

[7] Subsequently, my attention was drawn to the payment as the Court Registry was in a quandary as to whether an order of discharge could be issued in respect of the plaintiff based on the payment by SH.

[8] I directed that SH make a formal application to court citing authorities if a third party, not in any way related to the plaintiff can pay the fine imposed and obtain an order of discharge in respect of the plaintiff.

[9] On 7 April 2010 I heard the oral application by SH. Before the court was a counsel by the name of Avtaran Singh.

[10] When the court commenced proceedings, the court was told that Avtaran Singh represented SH. SH is just a friend of the plaintiff but he did not have any mandate from the plaintiff. SH on his own, sympathizing with the plaintiff paid the fine thinking that he could get an order for the plaintiff to be released from the prison.

[11] Counsel for SH in supporting the application submitted that he was relying on O. 52 r. 7 RHC which provides as follows:

7 Discharge of person committed (O. 52 r. 7) A

(1) The Court may, on the application of any person committed to prison for any contempt of Court, discharge him.

(2) Where a person has been committed for failing to comply with a judgment or order requiring him to deliver any thing to some other B person or to deposit it in Court or elsewhere, then, if the thing is in the custody or power of the person committed, the sheriff may take possession of it as if it were the property of that person and, without prejudice to the generality of paragraph (1), the Court may discharge the person committed and may give such directions for C dealing with the thing taken by the sheriff as it thinks fit.

[12] He further submitted that r. 7(1) should be read broadly not only to cover the committed person but other persons such as SH. He was however not able to or did not cite any authorities to support his contention. D

[13] On a close scrutiny of the relevant rule, it is very clear that the application for discharge must be made by "… any person committed to prison for any contempt of court …" which in this case would be the plaintiff himself. SH is not the committed person E and on his own admission did not even have the mandate of the plaintiff who had refused to pay the fine. I do not see how the relevant rule can be enlarged or read broadly. The wordings are so clear and no other interpretations can be given. It should be given its ordinary meaning. F

[14] In *N.S. Brindra's Interpretation of Statutes*, 8th edn at p. 98 the following was said:

Parke, B, in *Becke v. Smith*, formulated the following well-known rule for the interpretation of statutes: G

Another version of Golden Rule:

It is a very useful rule in the construction of a statute to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the H Legislature to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified so as to avoid such inconvenience, but not further.

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[15] Further at p. 238 under Chapter VI, "Some Important Considerations In Interpretation" on "Reasonableness" the following was said:

> **3. Reasonableness.**
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> The canons of construction of statute do not permit the Court to take the reasonableness or unreasonableness of the consequences of a particular interpretation, as it is in substance a question of expediency for the Legislature. *The first rule of construing any enactment is to give the words their natural meaning and it is only if no reasonable results can be arrived at by giving the words their natural meaning that some other interpretation is permissible.*
>
> *When the language of a statute is clear and unambiguous it must be interpreted in its ordinary sense*. A reasonable interpretation is to be preferred to one that leads to unreasonable results, like absurdity or unworkability. (emphasis added)

[16] For the above reasons, I dismissed SH's application. I also ordered that the amount of RM20,000 paid by SH be returned to him.

[17] It must be noted that in this suit it is the plaintiff versus the defendant. SH made the application to obtain the discharge of the plaintiff by paying the fine imposed. The application was dismissed. SH now appeals against the said decision and in the notice of appeals filed on 9 April 2010 SH is named as the "appellant". This is incorrect. SH was never a party or privy to the suit. Hence the notice of appeal is bad and must be rejected.